

379 * It is the special duty of the State to take care of those who suffer under any natural infirmity which incapacitates them from taking care of themselves. And, therefore, to adopt a maxim which in its operation casts them out from the protection of the law, of which they stand so much in need, and leaves them to be stripped of their property by the most palpable fraud, appears to be exceedingly unjust and cruel. The reason of this maxim does, in effect, declare, that the unfortunate are to be left unprotected, because they are unfortunate; that no care is to be taken of an innocent lunatic, because, being a lunatic, he knows not what he does, and cannot take care of himself. While on the other hand, it virtually proclaims, that iniquity shall be protected, and that the defrauder shall be allowed to profit by his own wrong, and to enjoy his plunder in perfect security.

It is said, that "if the common law had given a writ of *non compos mentis* to him who has recovered his memory after alienation, certainly the law would have given him remedy for the maintenance of himself, his wife, children and family, although he recovered not his memory but continued *non compos mentis*." *Beverley's Case*, 4 Co. 124. I do not clearly see the force of this inference; but it would seem, from what is said, that because a man

380 cannot have a deed set aside * in order to recover his property, he is therefore utterly without remedy for the maintenance of himself and family during the continuance of his insanity.

This, however, is not altogether correct. A right of property necessarily implies, that its owner has a remedy for the recovery of it; and also, that he is invested with the means of protection in the enjoyment of such property as the law allows him to dispose of without any other limit than that in doing so he shall not injure his fellow-citizen. But if the owner has a wife and children he is bound to maintain them, at least so far as his property affords him the means. This maxim applies only to the contracts of the lunatic; it does not prevent him from vindicating his right to his property by an action of ejectment, trespass, trover, &c. 3 *Bac. Abr.* 541. Nor does it release him from any obligation, which his property will enable him to discharge. Now it is in execution of this his own right, and in fulfilment of this his duty to his family, that the Court of Chancery has always acted, in taking care of persons who are *non compos mentis*, and their estates. For the Court is bound, in behalf of the State, to keep the lunatic, his wife, children and household with the profits of his lands and

ferred, that by a legal appearance at the trial, in criminal cases, is meant the actual presence of the mind as well as the body; thus recognizing the position, that in a state of insanity the mind has left the body, and cannot be brought before the Court with it.—4 *Blac. Com.* 25.